

## SCHEDULE 10.02

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CHANGE ORDER FORM

Date: \_\_\_\_\_

Change Order No. \_\_\_\_\_  
(Consecutively Numbered)

Contract No.: \_\_\_\_\_

Project No.: \_\_\_\_\_

Location (Building/Floor): \_\_\_\_\_

## CONTRACT CHANGE ORDER

Gentlemen: In accordance with this change we hereby adjust your contract as follows:

Original Contract Amount	\$ _____
Previous Contract Amount	\$ _____
Add for this Change	\$ _____
Deduct for this Change	\$ _____
Adjusted Contract Amount	\$ _____

Proceed with this work immediately.

The basis of this adjustment is \_\_\_\_\_ (Describe) \_\_\_\_\_

## (Examples)

Proposed Change Order(s) dated MM/DD/YY (List) with corresponding backup.

Bulletin Number(s) dated MM/DD/YY (List) with corresponding backup.

Construction Field Order(s) dated MM/DD/YY (List) with corresponding backup.

Backup shall include detailed breakdown by Construction Contractor and all sub contractors.

Verify Hourly Rates and Unit Prices per Project Agreement (if established).

Review Change Order Values with Prime Architect/Engineer's Budget estimate for proposed change(s).

If Time &amp; Material Change Order, ALL signed time tickets (signed by designated representatives of the General Construction Contractor and Owner's Project Manager) only will be accepted.

Change Orders may represent change in TIME as well as COST and must be taken into consideration during review and approval.

## (Approvals)

Construction Contractor \_\_\_\_\_

Authorized/Designated Representative Print Company's  
and Signer's Name below

Owner \_\_\_\_\_

Signed By Owner's Project Manager (Authorized Signer  
for Invoices)

Customer \_\_\_\_\_

Authorized (User signature level for total of  
ADD/DEDUCT creating the adjustment of this Change  
Order providing that the total is within the Project's  
approved budget.If tenant related, Authorized Signature must Owner's  
Records for Client's Cost Center Print Authorized  
Signer's Name and Title Below Line. Add Lines if  
hierarchy of signing authority is required

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**SINGLE PROJECT**  
**CONSTRUCTION SERVICES AGREEMENT**  
**CONTRACT NO.**

Pre-bid meeting will/will not be held. If applicable, the pre-bid meeting will occur at \_\_\_\_\_ A.M./P.M. on \_\_\_\_\_, at CDC #2 site, Brandywine, Delaware

When completed, return five (5) executed copies of this Single Project Construction Services Agreement if by U.S. mail addressed to Owner c/o Tishman Construction Corporation of Maryland, 666 Fifth Avenue, New York, New York 10103, Mail Code \_\_\_\_\_; if hand-delivered to Owner c/o \_\_\_\_\_, \_\_\_\_\_ Floor, \_\_\_\_\_, in each case for receipt by Owner by or before \_\_\_\_\_ A.M./P.M. on \_\_\_\_\_.

**Owner:**

Banc One Building Corporation  
 1 Bank One Plaza  
 Mail Code IL1-0505  
 Chicago, IL 60670-0503

**Construction Contractor:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Owner's Project Manager:**

Karl Wm. Auwarter, VP, Real Estate

**Construction Contractor's Key Staff Members:**

Superintendent: \_\_\_\_\_  
 Assistant Superintendent: \_\_\_\_\_

Building Owner/Manager: None

**Site:**

Bank One Core Data Center #2  
4001 Governor Printz Blvd.  
Brandywine, New Castle County, Delaware  
 \_\_\_\_\_  
 \_\_\_\_\_

**Other Key Staff:**

<u>Title</u>	<u>Name:</u>
_____:	_____
_____:	_____
_____:	_____
_____:	_____
_____:	_____

**Construction Manager:**

Tishman Construction Corporation of Maryland  
 666 Fifth Avenue  
 New York, New York 10103-0256

**Construction Contractor's Authorized Signatories:**

1. \_\_\_\_\_  
 2. \_\_\_\_\_  
 3. \_\_\_\_\_  
 4. \_\_\_\_\_

This Single Project Construction Services Agreement is made as of the \_\_\_\_\_ day of \_\_\_\_\_, ("Agreement") between Owner and Construction Contractor. This Agreement, including all exhibits attached hereto, together with all drawings, specifications and modifications issued after the execution of this Agreement and delivered to Construction Contractor, are herein called the "Contract" and the "Contract Documents". Owner and Construction Contractor agree to the terms and conditions set forth in the Contract Documents.

- The project ("Project") consists generally of, and a general description of the Work is (and, if applicable, a more detailed description of the Work is set forth on Exhibit C), as follows: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- Construction Contractor acknowledges it received the plans and specifications that are listed on, and, as applicable, a more detailed description of the Work as set forth on, Exhibit C hereto.

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3. Construction Contractor's obligations under this Agreement will/will not (strike through one) require payment and performance bonds as set forth in Section 6.04 of the General Conditions attached hereto as Exhibit G ("General Conditions"). If no selection is clearly made in the preceding sentence, then payment and performance bonds will be required as set forth in Section 6.04 of the General Conditions.
4. Liquidated damages will/will not (strike through one) be applicable to the Project as set forth in Section 7.03 of the General Conditions. If required, the "Per Day Liquidated Damage Amount" is \$ N/A.
5. The "Contract Sum" is \$ \_\_\_\_\_. The Contract Sum (subject to additions and deductions by change orders as provided by the Contract Documents) includes all costs and expenses related to the Work incurred by or on behalf of Construction Contractor and any costs or expenses in excess of the Contract Sum in anyway related to the Work or the Contract Documents shall be paid by Construction Contractor. Additionally, upon final completion of the Work at the time of the final payment being made to Construction Contractor, all costs associated with unused allowances and contingencies will be adjusted and returned to the Owner.
6. Written notice shall be deemed to be duly served if served to the Owner or Construction Contractor, as the case may be, at the respective address set forth below in accordance with Section 6.03 of the General Conditions:

If to Owner, addressed to:

Bank One301 N. Walnut StreetWilmington, DE 19801Attention: Karl Auwarter

If to Construction Contractor, addressed to:

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

With a copy to:

Tishman Construction Corporation of  
Maryland

666 Fifth Avenue

New York, New York 10103-0256

Attention: William Stanton

7. Construction Manager hereby represents to Construction Contractor that (i) Owner has retained Construction Manager to act as Owner's construction manager to arrange for the construction of the Project; and (ii) Construction Manager has full power and authority and is duly authorized to execute and deliver this Contract with and to Construction Manager upon the terms and conditions set forth herein. All communications from Owner to Construction Contractor shall be delivered either (i) to Construction Manager with instructions to forward such communications to Construction Contractor, or (ii) directly to Construction Contractor with a simultaneous notification to Construction Manager. All written approvals and actions required of or permitted to be taken by Owner under the Contract shall be effective if executed by either Owner or by Construction Manager acting on Owner's behalf, and Construction Contractor shall be permitted to rely on all such written approvals unless and until Owner (and not Construction Manager) notifies Construction Contractor in writing to the contrary. Construction Contractor shall be entitled to rely on information communicated through the Construction Manager and work with the Construction Manager until Owner provides written notice of the termination of such Construction Manager's responsibilities or a substitution of such Construction Manager.

This Agreement shall be effective only when (i) Owner executes and delivers this Single Project Construction Services Agreement to Construction Contractor, (ii) all appropriate blanks contained herein are completed, and (iii) each of the Exhibits A, B, C, D, E, F, and G (each of which is hereby incorporated herein) has been completed and attached hereto.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

CONSTRUCTION CONTRACTOR:

FIRM: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

OWNER:

BANC ONE BUILDING CORPORATION,  
an Illinois Corporation

By: Tishman Construction Corporation of Maryland,  
as Banc One Building Corporation's agent and  
construction manager

By: \_\_\_\_\_

Name: William Stanton

Title: Senior Vice President

**LIST OF EXHIBITS**  
**TO**  
**SINGLE PROJECT CONSTRUCTION SERVICES AGREEMENT**

- |           |  |
|-----------|--|
| EXHIBIT A | COMPLETION SCHEDULE  |
| EXHIBIT B | SCHEDULE OF VALUES AND ANTICIPATED DRAW SCHEDULE   |
| EXHIBIT C | PLANS AND SPECIFICATIONS   |
| EXHIBIT D | WORK AREA  |
| EXHIBIT E | MAXIMUM CHANGE ORDER RATES FOR OVERHEAD, PROFIT, CONTRACTOR'S FEE,<br>AND GENERAL CONDITIONS |
| EXHIBIT F | RATES AND UNIT PRICES  |
| EXHIBIT G | GENERAL CONDITIONS TO SINGLE PROJECT CONSTRUCTION SERVICES<br>AGREEMENT                      |

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**EXHIBIT A**

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**COMPLETION SCHEDULE**

**Note:** This Schedule must include the dates for Substantial Completion and Final Completion.

**Section "E" in attached Rider "A", dated**

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**EXHIBIT B**

**SCHEDULE OF VALUES AND ANTICIPATED DRAW SCHEDULE**

**Note:** These schedules must specifically separate out the Cost of the Work.



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EXHIBIT C

PLANS AND SPECIFICATIONS

**Attached Rider "B", List of Drawings and Specifications, dated**

**Attached Rider "A", General Addendum, dated**

EXHIBIT D

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WORK AREA

**4001 Governor Printz Blvd.  
Brandywine, New Castle County, Delaware**

**Site Logistics Plan, undated, attached**

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EXHIBIT E

MAXIMUM CHANGE ORDER RATES FOR OVERHEAD,  
PROFIT, CONTRACTOR'S FEE, AND GENERAL CONDITIONS

1. Subcontractor may add to its "on-site" cost for extra Work. 15 % for all overhead, profit, fee and general conditions items
2. Construction Contractor may add to its "on-site" cost of extra Work when such Work is performed directly at the site with its own personnel, equipment and materials, it being agreed by Construction Contractor that it will not subcontract out work when it would be more efficient (both in terms of time and money) for Construction Contractor's own personnel to perform such work. 0 % for all of Contractor's Fee and general conditions items related to such Change Order
3. Construction Contractor may add an additional percentage to subcontractor's costs for administration and supervision of extra Work by a subcontractor. 6 % for all of Contractor's Fee and general conditions items related to such Change Order
4. Construction Contractor shall deduct over and above his "on-site" cost of deleted Work when such Work would have been performed directly at the Site with its own personnel, equipment and materials. 15 % for all of Contractor's Fee and general conditions items related to such Change Order
5. Construction Contractor shall deduct an additional percentage over and above subcontractor's credit for administration and supervision of extra Work by a subcontractor. 6 % for all of Contractor's Fee and general conditions items related to such Change Order

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EXHIBIT F

RATES AND UNIT PRICES

Item

Price

**Attached Rider "C" – Alternates and Unit Prices, dated**

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EXHIBIT GGENERAL CONDITIONS  
TO  
SINGLE PROJECT CONSTRUCTION SERVICES AGREEMENT

These General Conditions are attached to and made a part of the Single Project Construction Services Agreement ("Agreement"). All terms defined either in the Agreement or in these General Conditions shall have the meaning ascribed thereto wherever used in the Contract Documents. Terms and abbreviations not specifically defined in the Contract Documents which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

ARTICLE 1 WORK

1.01 Construction Contractor shall perform or cause to be performed, in a first class manner and in accordance with the Contract, all work set forth in, contemplated by or reasonably inferable as being necessary to produce the intended results from, the plans and specifications listed on Exhibit C to the Agreement (as supplemented and modified by Owner throughout the design process), including all labor and materials to complete the general description of such work contained in the Agreement and all movable furnishings specifically identified as being the responsibility of or to be performed by Construction Contractor on such plans and specifications (as supplemented and modified by Owner throughout the design process) and excluding movable furnishings specified or indicated on such plans and specifications to be excluded or to be the responsibility of Owner or Owner's other contractors or consultants (collectively all such labor, materials, and services to be provided by Construction Contractor are herein called the "Work"). In the event of any discrepancy between large-scale plans and small-scale plans, the large-scale plans shall govern. The foregoing shall not relieve Construction Contractor of Construction Contractor's responsibility to advise Owner of any inconsistencies in any of the plans and specifications which a fully competent first class contractor could reasonably be expected to discover upon review of the plans and specifications. Except as set forth above, if any of the Contract Documents imposes a different or greater obligation or limitation upon Construction Contractor than another Contract Document, the Contract Document imposing the greater obligation or limitation on Construction Contractor shall govern and prevail. Plans and specifications which are either (i) necessary for the proper execution and completion of the Work or for the proper operation of the completed improvements or (ii) consistent with and reasonably inferable from the plans and specifications attached hereto as Exhibit C (as supplemented and modified by Owner throughout the design process) as being part of the scope of the Work may hereafter be furnished and will be incorporated in Exhibit C and into the Work at no additional cost to Owner. Construction Contractor acknowledges that it has participated and will participate in meetings with Owner and its design professionals and Construction Contractor has been given ample opportunity to obtain a thorough understanding of the intended final product and fully reviewed the plans and specification listed on Exhibit C, and thus Construction Contractor hereby agrees that no increase in the Contract Sum shall result unless a change in scope occurs as evidenced by a written change order executed by Owner and Construction Contractor. Construction Contractor shall participate in the value engineering by proposing appropriate and suitable alternatives to achieve the intended design, functionality and quality in a manner that will best enable the Work to be completed within the budget and schedule therefor and shall cooperate and work with the Owner and its consultants as part of an integrated team to maximize the quality of the improvements contemplated by the Work and its components and systems while minimizing the cost of the Work and meeting the requirements of the schedule therefor.

1.02 As between Owner and Construction Contractor, all plans and specifications for the Work and other material related to the Work prepared by Construction Contractor or furnished to Construction Contractor by Owner are and shall remain Owner's property, and shall be used by Construction Contractor only with respect to the Work. Construction Contractor acknowledges that a confidential relationship has been established between Owner and Construction Contractor and that Owner may communicate to Construction Contractor certain confidential information to enable Construction Contractor to render the services required in the Contract. Construction Contractor agrees (i) to treat and to obligate its consultants, employees, and subcontractors to consider and treat all information as secret and confidential, and (ii) not to disclose or issue any information or make available any reports, recommendations and/or conclusions in connection with the Work or the Site, which Construction

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Contractor may make to Owner, or any drawings, to any person, firm or corporation or use the same in any manner whatsoever without first obtaining Owner's prior written approval.

1.03 The Contract Documents represent the entire and integrated agreement between Owner and Construction Contractor and shall be deemed to supersede all prior negotiations, representations or agreements, whether written or oral.

## ARTICLE 2 OWNER

2.01 To the extent required by Construction Contractor to perform the Work, Owner shall furnish descriptions of all surveys describing the physical characteristics, legal limitations and utility locations for the area within which the Work is to be performed and where materials are to be stored, which Work areas within the Site are limited to the areas designated as such on Exhibit D to the Agreement ("Work Area"). Construction Contractor shall confine its activities at the Site to the Work Area. All other grades, lines, levels, benchmarks, courses and distances shall be established and maintained by Construction Contractor.

2.02 Unless otherwise provided in the Contract Documents, Construction Contractor will be furnished with, free of charge, one set of prints and one reproducible set of all drawings comprising the plans and specifications and one set of the specifications. Owner shall be responsible for all utility connection charges and tap-in fees, including excess capacity fees, meter installation charges or the like.

2.03 If Construction Contractor is in default of any of its obligations under the Contract Documents, and such failure or default continues for seven days after written notice from Owner, Owner may order Construction Contractor immediately to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Construction Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, Owner's other rights under the Contract Documents.

2.04 The Project Manager identified in the Agreement, or any substitute designated as such in writing from Owner to Construction Contractor, is Owner's representative with full power to bind Owner.

2.05 Owner reserves for itself and its representatives the right of access to any part of the Work at any time for the purpose of observing or testing or to install other work either with its own forces or with other contractors. Such access is not to be construed to mean partial occupancy by Owner.

2.06 Owner reserves the right to designate, by notice to Construction Contractor (if not so designated on Page 1 of the Agreement) one or more persons or entities that is the owner or manager of the Site or the existing building within which the Work is to be performed (if any, the "Building") as a Building Owner/Manager. To the extent a Building Owner/Manager is so designated, all provisions of this Contract relating to the Building Owner/Manager shall apply, and mean and refer, to the persons or entities so designated. To the extent a Building Owner/Manager is not so designated, no force or effect shall be given to those provisions to the extent related to the Building Owner/Manager.

2.07 Owner reserves the right to engage third parties, including architects and engineers, to assist Owner in various capacities related to the Work and Contract Documents, including in the administration of the Contract Documents. Construction Contractor agrees to cooperate with all such consultants, including architects and engineers, in all aspects of the Work and Contract Documents, including the administration thereof. Construction Contractor acknowledges and agrees that Owner may grant conditional approval of or require the approval of any such consultant, including any architect or engineer, as a condition to Owner's granting any consent or approval required of Owner under the Contract Documents. Construction Contractor shall cooperate with such processes required by Owner to obtain such consultant's consents.

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ARTICLE 3 CONSTRUCTION CONTRACTOR

## 3.01 Intentionally Omitted.

3.02 Construction Contractor shall perform the Work in accordance with all laws, ordinances, codes, rules and regulations, orders and decisions of all government authorities having jurisdiction over the Site ("Government Requirements"), and otherwise perform Construction Contractor's obligations contemplated in the Contract Documents. Construction Contractor acknowledges that Construction Contractor has visited the Site, examined all conditions affecting the Work, and is fully familiar with all of the conditions thereon and affecting the Work and the Work Area. Construction Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved (or approved as noted) shop drawings, product data or samples for such portion of the Work.

3.03 Construction Contractor shall employ a competent project superintendent, necessary assistants, and staff, as necessary for the proper administration, coordination and supervision of the Work, all approved by Owner in writing by either being listed in the Agreement or by separate written approval accepted by or on behalf of Owner. Owner's approval of any such person (or of any substitute for such person) shall not relieve Construction Contractor of or otherwise limit or affect Construction Contractor's obligation to employ competent persons of sufficient skill and experience to perform their assigned responsibilities in accordance with the standards and requirements set forth in the Contract. Construction Contractor's project superintendent shall be in attendance at the Work Area for the duration of the Work and such project superintendent's duties shall not be diminished without the prior written consent of Owner. Construction Contractor's project superintendent shall represent Construction Contractor and all communications given to such project superintendent shall be as binding as if given to Construction Contractor. Upon Owner's request, any communication from such project superintendent shall be confirmed in writing by an authorized partner, member or officer, as the case may be, of Construction Contractor. Construction Contractor's project superintendent shall have authority to furnish estimates and to approve field changes and shall attend meetings with Owner at such times and places as shall be requested by Owner to report on the progress of the Work or otherwise to consult with Owner. Construction Contractor's project superintendent and other members of Construction Contractor's staff identified on page 1 of the Agreement or separately approved by Owner as provided above shall not be changed without the consent of Owner unless such person leaves the employ of Construction Contractor, in which event the substitute must first be approved in writing by Owner. If Owner gives Construction Contractor notice Construction Contractor's project superintendent or any other of Construction Contractor's personnel identified on page 1 of the Agreement (or any person that replaces any of the foregoing) has failed to perform his or her responsibilities in accordance with the standards set forth in this Contract and such failure is not remedied within ten (10) days of such notice, Construction Contractor shall, if requested by Owner, promptly replace such person with a person having the competence, skill and experience necessary to perform such responsibilities and approved by Owner. Those individuals who are the authorized signatories for Construction Contractor are also listed in the Agreement.

3.04 Construction Contractor shall (a) supervise and direct the Work using Construction Contractor's best professional skill and attention, and (b) be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. Construction Contractor shall furnish its best skill and judgment, employing first class professional standards, and shall cooperate with the other parties involved in the Work in furthering the interests of Owner. Construction Contractor accepts sole responsibility for the acts and omissions of Construction Contractor's employees, subcontractors and their respective agents and employees. Construction Contractor shall (i) at all times enforce strict discipline and good order among Construction Contractor's employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him; (ii) confine Construction Contractor's equipment, apparatus, materials, and operations of its workmen and subcontractors within limits allowed by Owner and Building Owner/Manager and not unnecessarily burden the Work Area with materials; (iii) correct, at Construction Contractor's expense, damage to property resulting from the Work; and (iv) if the Work requires a temporary shut-down of a service in the Building or any other improvements on the Site, cause such Work to be accomplished during other than normal hours and coordinated with Owner and Building Owner/Manager at Construction Contractor's expense; provided further that Construction Contractor shall give adequate notice to Owner and Building Owner/Manager that Construction Contractor will require a shut-down.



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3.05 (a) Construction Contractor shall not use, in connection with the Work, any material containing asbestos as defined by the United States Environmental Protection Agency 40 CFR CH. I (7-1-00 Edition) Subpart M-National Emission Standard for Asbestos and the Occupational Safety and Health Administration, Part 1910: Occupational Safety and Health Standards, Subpart Z: Toxic and Hazardous Substances, Standard 1910.1001: Asbestos.

(b) Construction Contractor shall not use, in connection with the Work, any hazardous waste, toxic substance or related materials, including substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601 et seq., Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sec. 1802, and the Resource Conservation Act and Recovery Act, as amended, 42 U.S.C. Sec. 6901 et seq. ("Hazardous Materials") in such manner as would violate any Government Requirements or would cause any damage or a risk of any damage to the environment, or in such a manner as to leave any residue which could be hazardous to persons or property or cause liability to Owner.

3.06 Construction Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin or ancestry. Construction Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age or national origin or ancestry. Construction Contractor shall comply with, and shall cooperate with Owner and other contractors and subcontractors in connection with compliance with, the regulations of the Occupational Safety and Health Act of 1970, as amended ("OSHA"), or any similar state law which is applicable. If any Construction Contractor's employee working on the Work files a charge of noncompliance with OSHA, Construction Contractor shall notify Owner's Project Manager promptly upon receiving notice of such charge.

3.07 (a) The Contract Sum is based on the Completion Schedule attached to the Agreement as Exhibit A (said schedule, as modified as permitted herein with Owner's written approval is herein called the "Completion Schedule"). Except as expressly provided for in the Contract Documents, Construction Contractor shall not be entitled to any additional payment for overtime, which includes shift work, required to complete the Work in accordance with the Completion Schedule.

(b) If Owner requests Construction Contractor to work overtime due solely to Owner's election to accelerate the performance of the Work ahead of the Completion Schedule, Construction Contractor shall comply with the following requirements:

(i) Construction Contractor shall submit a statement of employees by name, trade, classification, hourly rate, and premiums or overtime charges worked to substantiate premium or overtime charges, in such detail as to demonstrate to Owner its correctness. These statements shall be prepared on a daily basis and shall be submitted daily for Owner's records. The rates, premiums and overtime charges shall correspond with the schedule of rates and unit costs in Exhibit F to the Agreement, which rates and unit prices include all contributions to federal and state unemployment tax and for federal insurance contributions tax required to be paid by Construction Contractor.

(ii) Owner will pay for authorized overtime work only the amounts of overtime premium wages actually paid by Construction Contractor in accordance with those set forth on the schedule of rates and unit costs attached as Exhibit F to the Agreement.

3.08 (a) Construction Contractor represents and warrants to and covenants with Owner that all materials and equipment furnished under the Contract will be new unless otherwise specified, and that all Work will be free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective by Owner. If required by Owner, Construction Contractor shall promptly furnish satisfactory samples of materials demonstrating that the materials comply with this Section. This representation, warranty and covenant is not limited by the provisions of Section 11.02 hereof related to correction of Work.



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(b) Construction Contractor warrants all Work performed and material and equipment furnished against defects and deficiencies (it being agreed by Owner that failure of any part of the Work due solely to misuse by persons other than Construction Contractor and subcontractors shall not be deemed a defect or deficiency in such part) which develop within (i) as to those portions of the Work not covered by the following clause (ii), a period of one year from final completion of the Work or if such defect is not discovered within one year from final completion of the Work, a period of one year from the time such defect should have been discovered with the exercise of reasonable diligence and in no event shall such warranty extend beyond three years from the date of acceptance of the Work and final payment by Owner; (ii) the period specified in the Contract Documents as to any part of the Work for which a period longer than one year is specified. The foregoing time limitations shall not apply to defects and deficiencies which are latent and not readily ascertainable by ordinary observation. Notwithstanding the foregoing, if Construction Contractor uses any heating, ventilating or air conditioning facilities installed as a part of the Work prior to final completion, the warranty with respect to such heating, ventilating or air conditioning facilities shall not commence until final completion of all of the Work.

(c) Construction Contractor shall require each subcontractor to execute and deliver to Owner a warranty of the Work to be performed by such subcontractor, in form satisfactory to Owner which shall equal or exceed the requirements of this Section 3.08 and any additional requirements set forth in the Contract Documents and shall otherwise be in form and substance satisfactory to Owner. Such warranty by a subcontractor shall be enforceable directly by Owner against each such subcontractor and shall be in addition to any warranty provided by Construction Contractor herein. Construction Contractor shall obtain warranties with respect to all equipment and materials and personal property supplied with respect to the Work from the respective suppliers, at least as favorable as those generally supplied with respect to such equipment, materials and personal property by the suppliers thereof and satisfying any requirements set forth in the Contract Documents, which warranties shall be enforceable directly by Owner against such suppliers and shall be in addition to any warranty provided by Construction Contractor herein or by any subcontractor. The warranties shall be executed by the respective suppliers or subcontractors not later than the date of payment to be made with substantial completion of the applicable subcontract or purchase order. Construction Contractor shall obtain such warranties from each subcontractor and deliver one executed original of each to Owner. Construction Contractor shall bind copies of warranties together in a single volume, grouped by trade and properly indexed. Owner shall have no obligation to make any payment with respect to the portion of the Work provided by any subcontractor or supplier which has not delivered the warranties required of such party.

(d) If the Contract Documents, any Government Requirements or Owner (to see if the Work complies with the Contract Documents) require any part of the Work to be tested, Construction Contractor shall give Owner not less than 48 hours' notice of the readiness of such part of the Work so that Owner may observe such testing. Construction Contractor will retain a tester satisfactory to Owner. Construction Contractor shall bear the costs of all tests required by the Contract Documents or by Governmental Requirements. If a test is not required either by the Contract Documents or by any Governmental Requirements, and if testing reveals a failure of the Work to comply with the Contract Documents, Construction Contractor shall bear all costs related to such test, including compensation for Owner's additional services made necessary by such test, and Construction Contractor shall correct such failure in accordance with Article 11 hereof; otherwise Owner shall bear such costs, and an appropriate change order shall be issued to adjust the Contract Sum. Construction Contractor shall not be relieved of Construction Contractor's obligations to perform or cause performance of the Work in accordance with the Contract Documents by reason of any errors or omissions contained in any tests performed by or for Owner, notwithstanding that such tests and the results thereof may have been delivered to Construction Contractor and that Construction Contractor may have relied upon the correctness of such tests. The fact that Owner may have provided to Construction Contractor any such tests or the results thereof, shall not relieve Construction Contractor of the obligation to assure that the Work performed by Construction Contractor is in compliance with the Contract Documents.

3.09 Construction Contractor shall procure all permits, licenses and certificates of inspection or occupancy necessary to complete the Work and occupy the Work Area, and shall deliver same to Owner promptly upon completion of the Work or at Owner's request. If any utility connection charges, tap-in fees or similar items are required to be paid as a condition precedent to the issuance of any such permits, licenses, or certificates, Construction Contractor shall notify Owner thereof and coordinate Owner's payment of such items as required by Section 2.02 in a timely manner to permit proper issuance of all permits, licenses and certificates as required hereby.

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3.10 Construction Contractor shall commence performance of its obligations under the Contract Documents upon the date set forth in the Completion Schedule for commencement of the Work or, if no such date is included in the Completion Schedule, upon execution of the Agreement by Owner and delivery to Construction Contractor of the Agreement by Owner. Construction Contractor shall, subject to adjustment evidenced by change orders, cause completion of each of the elements of the Work, including substantial completion and final completion, as set forth in the Completion Schedule. Construction Contractor shall consult with Owner on the actual progress of the Work and, if requested by Owner at any time, shall at no additional cost to Owner, submit to Owner a series of reports (at such intervals as may be requested by Owner) reflecting the progress of the Work.

3.11 Construction Contractor shall maintain at the Work Area for Owner one record copy of all current and up-to-date plans and specifications, addenda, change orders and other modifications, in good order and marked currently to record all changes made during construction, and approved shop drawings, product data and samples. No review or receipt of such records by Owner shall be a waiver of any deviation from the Contract Documents or in any way relieve Construction Contractor from Construction Contractor's responsibility to perform the Work in accordance with the Contract Documents unless such deviations are specifically noted in writing by Construction Contractor and specifically approved in writing by Owner. Construction Contractor shall furnish to Owner four complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment furnished under the Contract Documents and any additional data specifically requested under the various sections of the specifications for each division of the Work. The manuals shall be arranged in proper order, indexed and suitably bound.

3.12 (a) Construction Contractor shall procure, review, and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in any work of Owner, all shop drawings, product data and samples required by Contract Documents. Construction Contractor shall maintain an accurate record of all deviations from the plans and specifications which occur in the Work as actually constructed, and shall submit to Owner, two (2) sets (one to be reproducible) of complete information including descriptions, drawings, sketches, marked prints, and similar data, indicating the "as-built" conditions. Construction Contractor shall keep "as-built" record drawings up to date concurrently as the Work progresses. Submittal of such drawings is required prior to Construction Contractor submitting its application for final payment.

(b) Each subcontractor shall submit through Construction Contractor all shop drawings at a scale which is easily read and not smaller than 8-1/2 inches by 11 inches nor larger than 36 inches by 48 inches, and all samples and manufacturers' descriptive data. All submissions by or through Construction Contractor shall be thoroughly examined by Construction Contractor and shall clearly identify the relevant specifications section before submission to Owner, and shall bear Construction Contractor's approval stamp.

(c) All shop drawings must be dated and properly identified with the name of the Site and Work Area. Each lot submitted must be accompanied by a letter of transmittal which refers to the name of the Site and Work Area and to the specification section number for identification of each item, and which clearly states qualifications, departures or deviations from the Contract Documents, if any. For each section of the Work, shop drawings shall be numbered consecutively and the numbering system shall be retained throughout all revisions. Construction Contractor shall submit one reproducible transparency and as many prints (at least three) of each shop drawing as may be reasonably required by Owner until final acceptance thereof is obtained. Construction Contractor shall submit copies, in amounts requested by Owner, of manufacturers' descriptive data for materials, equipment and fixtures.

(d) In case a considerable range of color, graining, texture or other characteristic may be anticipated in finished products, a sufficient number of samples of the specified materials shall be furnished by Construction Contractor to indicate the full range of such characteristics that will be present in the finished products. Products delivered or erected without submittal and approval of full range samples shall be subject to rejection. Except for range samples, and unless otherwise called for in the various sections of the specifications, samples shall be submitted to Owner in triplicate. All samples shall be marked, tagged or otherwise properly identified with the name of Construction Contractor, the name of the Site and Work Area, the purpose for which the samples are submitted and the date, and shall be accompanied by a letter of transmittal containing similar information, together with the specifications section number for identification of each item.

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3.13 Construction Contractor shall be responsible for seeing that structural members are not cut without prior written authority of the Building Owner/Manager and Owner. Owner's permission to patch any areas or items of Work shall not constitute a waiver of Owner's right to require complete removal and replacement of said areas or items of Work, if, in Owner's opinion, said patching does not satisfactorily restore quality and appearance of same. Any penetration of the slab of any floor shall be core drilled in accordance with procedures to be established and approved in writing by the Building Owner/Manager and Owner.

3.14 Construction Contractor at all times shall keep the Work Area and to the extent Construction Contractor is granted access, the Site, in a neat and orderly condition and free from accumulation of waste materials or rubbish caused by Construction Contractor's operations. In order to make the Work fit for occupancy for its intended purposes upon substantial completion, Construction Contractor shall remove as soon as and to the extent practicable all temporary facilities, waste materials and rubbish from and about the Work Area and, to the extent Construction Contractor is granted access, the Site, as well as all supplies, tools, construction equipment, machinery and surplus materials and leave such areas in a broom clean condition or such other condition as Owner may designate to Construction Contractor in writing prior to the date hereof. Any items damaged by Construction Contractor or its subcontractors shall be replaced, and all surfaces which have been scratched or marred shall be refinished, at no additional cost to Owner.

3.15 Construction Contractor shall pay all royalties and license fees applicable to the Work and shall not unlawfully use or install any patented article.

3.16 (a) To the fullest extent permitted by law, Construction Contractor shall indemnify, defend, save and hold Owner; its affiliated companies; Owner's Lender, if any; Owner's tenants, if any; the Building Owner/Manager, if different from Owner, Construction Manager; and the shareholders, members, partners, officers, employees of all of them (collectively the "Indemnitees") harmless from and against all loss and expense (including reasonable attorneys' fees and other costs and expenses) by reason of the liability imposed by law upon the Indemnitees, or any of them, for damages because of Construction Contractor's breach of the Contract Documents and for damages because of bodily injury, occupational sickness or disease, including death resulting therefrom, sustained by any employees of Construction Contractor or subcontractor while at the Site where Work under the Contract is being conducted or elsewhere, while engaged in the performance of Work under the Contract, or sustained by any person or persons other than employees of Construction Contractor, however such injuries may be caused, including such injuries as are caused by concurrent negligence of the Indemnitees, or any of them, whether attributable to a breach of statutory duty or administrative regulation or otherwise, and such injuries for which liability is imputed to the Indemnitees, or any of them, or claims for property damage because of injury to or destruction of tangible property (other than the Work itself to the extent the damage or injury thereto results from a loss covered by Owner's policy of builder's risk insurance, including loss of use resulting therefrom), directly or indirectly arising or alleged to arise out of the performance of or the failure to perform the Work or the failure to protect the Work or the Site, or the condition of the Work, the Site, adjoining land or driveways, or streets or alleys used in connection with the performance of the Work. Without limiting the generality of the foregoing, the defense and indemnity set forth in this Section include, subject only to the limitations contained in this Section, all liabilities, damages, losses, claims, demands and actions on account of bodily injury, death or property loss to an Indemnitee or to any other persons or entities, whether based upon, or claimed to be based upon, statutory (including workers' compensation), contractual, tort or other liability of any Indemnitee. In addition, such defense and indemnity shall include all liabilities, damages, losses, claims, demands and actions for defamation, false arrest, malicious prosecution or any other infringement of similar rights.

(b) The provisions of the indemnity provided for herein shall not be construed to indemnify any Indemnitee for its own negligence, if any, to the extent not permitted by law or to eliminate or reduce any other indemnification, right or remedy which Owner has under Contract Documents or otherwise.

(c) The obligation set forth in this Section shall, but not by way of limitation, specifically include all claims directly or indirectly alleged to arise under any scaffolding, structural work or safe place law, or any law with respect to the protection of adjacent landowners.

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(d) Construction Contractor shall be notified of any claims against any of the Indemnitees of which Owner has notice, and Owner shall give Construction Contractor such reasonable information and assistance as may be requested by Construction Contractor to perform the obligations set forth in this Section; provided, however, that (i) failure to notify Construction Contractor of any claim shall not relieve Construction Contractor of any obligations contained in this Section; and (ii) the obligation of Owner to give information and assistance shall be at Construction Contractor's expense and shall not obligate Owner to incur any expense or liability.

(e) Construction Contractor expressly understands and agrees that any performance or labor and material bond or insurance protection required by any provision of the Contract Documents, or otherwise provided by Construction Contractor, shall in no way limit the responsibility to indemnify, save and hold harmless and defend each of the Indemnitees as herein provided.

(f) Construction Contractor shall cause the foregoing indemnification agreement by Construction Contractor to be included in each subcontract between Construction Contractor and a Subcontractor and between each Subcontractor and its Subcontractors and shall be in favor of each of the Indemnitees and Construction Contractor, and at Owner's request, Construction Contractor shall provide evidence satisfactory to Owner that it has fulfilled its obligation under this Section.

(g) If any claim indemnified hereunder has not been settled or discharged when the Work is completed, final payment of the Contract Sum shall not be due, unless and until Construction Contractor provides a (i) bond issued by a bonding company satisfactory to Owner, (ii) other security acceptable in an amount equal to 150% of the amount of any such claim, including interest on such claim as estimated by Owner, or (iii) other security acceptable to Owner, which bond or other security shall be in form and substance satisfactory to Owner and shall be subject to such increase as Owner may from time to time require as interest accrues on such claim.

(h) In any and all claims against any Indemnitee or any of its agents or employees by any employee of Construction Contractor, anyone directly or indirectly employed by him or anyone for whose acts he may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Construction Contractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

3.17 Construction Contractor will keep complete and detailed books and records which will accurately reflect costs. Such books and records and all supporting data shall, at all reasonable times and upon reasonable notice, until three years after the Work has been finally completed, be open for audit, inspection and copying by Owner and its authorized representatives. The Contract Sum shall be allocated and itemized by Contractor in accordance with Owner's cost segregation study as directed from time to time by Owner or its third party consultant to allow Owner to properly allocate each element of the Contract Sum for federal income tax purposes.

3.18 Construction Contractor shall not divulge information concerning the Contract Documents or any Work to anyone (including information in applications for permits, variances, etc.) without Owner's prior written consent. Owner reserves the right to control the release of all information relating to the Project, including the timing of any release, together with its form and content. This requirement shall survive the expiration of the Contract Documents.

3.19 If Building Owner/Manager is different from Owner, Construction Contractor agrees that:

(a) Construction Contractor shall at Construction Contractor's sole cost and expense arrange directly with Building Owner/Manager for all access to the Work Area, storage at the Site, use of elevators and other vertical transportation, temporary utilities and facilities.

(b) Construction Contractor shall at Construction Contractor's sole cost and expense comply and cause others to comply with all requirements of Building Owner/Manager with respect to the conduct of its activities at the Site, and the activities of the employees of Construction Contractor and subcontractors, so that the foregoing shall not interfere with the activities of Building Owner/Manager or other tenants of the Building.



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3.20 Construction Contractor shall include in the Contract Sum all Allowances stated in the Contract Documents. Items covered by these Allowances shall be supplied for such amounts and by such persons as Owner may direct. "Allowances" means the amounts stated to be allowances from time to time in the Contract Documents and such amounts represent the actual cost of the articles for which allowances are stated, and include any cost of hauling, cartage, supervision, preparing of work, and the cost of installing. Whenever the estimated budget cost attributable to an Allowance item is less than the actual cost of such Allowance, the Contract Sum shall be increased by Change Order to reflect such difference. Whenever the estimated budget cost attributable to an Allowance item is greater than the actual cost of such Allowance, the Contract Sum shall be decreased by Change Order to reflect such difference. In accordance with the plans and specifications, Owner will select materials or equipment for which an Allowance is provided and notify Construction Contractor of Owner's selection and price agreed upon. Construction Contractor shall contract for said materials and/or equipment and supervise their delivery and installation and be responsible for such Allowance items as fully as for other parts of the Work.

3.21 Construction Contractor shall perform all of its obligations under the standard of care of a first class contractor. All references in the Contract Documents to a "first class contractor", "fully competent first class contractor", or activities to be performed in a "first class manner" or any similar words or phrases as used in reference to Construction Contractor shall mean Construction Contractor's best skill and judgment in accordance with the practice exercised by a fully competent, first class contractor whose competence and professionalism equals that of contractors with at least ten (10) years experience in performing the work and services and constructing projects similar in scope and complexity to those required of Construction Contractor under the Contract Documents for large corporate and institutional clients in the greater metropolitan area surrounding the Project.

3.22 Owner has elected to implement an Owner Controlled Insurance Program ("OCIP") in accordance with Schedule A, attached herein, that will provide Workers' Compensation, Employer's Liability, General Liability and Excess "Umbrella" Insurance for the Construction Manager and all eligible Construction Contractors and subcontractors of every tier providing direct labor on the Project. Owner agrees to pay all premiums associated with the OCIP including all deductibles or self-insured retentions unless otherwise stated in the Contract Documents.

The Owner will also provide, at its own cost, builder's risk coverage as outlined in Schedule A.

#### ARTICLE 4 SUBCONTRACTORS

4.01 Intentionally Omitted.

4.02 Construction Contractor, from time to time at the request of Owner (and in any event prior to the awarding of a subcontract or purchase order for a particular portion of the Work), shall furnish to Owner in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for such portion of the Work as Owner may designate, together with sufficient documentation for Owner to review the qualifications, capabilities and financial capacity of each such proposed subcontractor, which information shall be in the form and meet the requirements of Owner. Construction Contractor shall not allow any such proposed person or entity to whom Owner has made objection to bid on the Work. Construction Contractor shall not be entitled to an adjustment to the Contract Sum or an extension of the contract time by reason of any objection to a proposed bidder by Owner or Construction Contractor pursuant to this Section. Construction Contractor shall not unreasonably refuse to solicit bids from subcontractors designated by Owner.

4.03 Owner actively seeks out historically under-utilized businesses ("HUB's") which are qualified to fulfill Owner's requirements for goods and services purchased. If Construction Contractor meets the state or federal qualifications to be a HUB, Construction Contractor is encouraged to submit documentation supporting such status to Owner with the Agreement. Owner's Supplier Diversity Development Program ("SDDP") is committed to supporting HUBs with a focus on Minority and Women Business Enterprises and has taken affirmative steps to provide opportunities for their growth and participation in Owner's procurement process. Owner's primary suppliers, such as Construction Contractor, are asked if it is feasible and, if using subcontractors to provide Work, including labor and materials, required by Owner pursuant to the Contract Documents, to subcontract with HUBs. Owner will consider the level of Construction Contractor participation in SDDP before entering into the Agreement with Construction Contractor and in the quarterly evaluation of Construction Contractor's performance under the

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Contract Documents. If Construction Contractor utilizes one or more HUBs as subcontractors, Construction Contractor shall submit a quarterly report of such utilization to Owner on Owner's SDDP form. SDDP underscores Owner's commitment to increase procurement activity with HUBs on a corporate-wide basis. Owner has a goal to utilize HUBs for an amount equal to 5% of the dollar amount of Owner's purchases. Construction Contractor further acknowledges that upon Owner's request, Construction Contractor will use its best efforts to use Minority and Women Business Enterprise ("M/WBE"), Small Disadvantaged Business ("SDB"), and Small Business Enterprise ("SBE") (each as certified by the appropriate state or local body responsible for such certification) as subcontractors. If Construction Contractor uses M/WBE, SDB or SBE vendor(s), then Owner and Construction Contractor will agree to the guidelines regarding the use of such vendors, in order to ensure that Construction Contractor provides the Work, including labor and materials, according to the terms of the Contract Documents. The provision of this Section 4.03 shall not modify or otherwise affect Construction Contractor's obligation under Section 3.06.

4.04 By appropriate agreement, Construction Contractor shall require each subcontractor, to the extent of the Work to be performed by such subcontractor, (i) to be bound to Construction Contractor by the terms of the Contract Documents, (ii) to assume toward Construction Contractor all of the obligations and responsibilities which Construction Contractor, by these Contract Documents, assumes toward Owner, and (iii) to grant to Construction Contractor all of the rights which Construction Contractor, by these Contract Documents, grants to Owner. Construction Contractor shall require each subcontractor to enter into similar agreements with its subcontractors. Nothing contained in the Contract Documents shall create any contractual obligation between any subcontractor and Owner; provided, however, that each subcontract shall provide that Owner, at Owner's option, shall have the right to cause the subcontractor to perform for the benefit of Owner the remainder of the Work covered by such subcontract in the event that the Contract is terminated, so long as Owner shall have paid to Construction Contractor all amounts then due such subcontractor and thereafter Owner continues to pay the amounts due such subcontractor as they come due.

4.05 Construction Contractor shall require each subcontractor to furnish, maintain, and continuously comply, as applicable, with the requirements applicable to Construction Contractor set forth on Schedule A to these General Conditions to Single Project Construction Services Agreement.

#### ARTICLE 5 WORK BY OWNER OR BY SEPARATE CONTRACTORS

Owner reserves the right to let other contracts in connection with the Site and Construction Contractor hereby acknowledges that Building Owner/Manager or any tenant in the Building may also let to other contractors contracts in connection with the space each has in the Building. Construction Contractor shall coordinate, as needed, and cooperate with all such contractors. If any part of Construction Contractor's Work depends for proper execution or results upon the work of Owner or any separate contractor, Construction Contractor shall, prior to proceeding with the Work, promptly report to Owner any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of Construction Contractor to report same after the same becomes apparent shall constitute an acceptance of Owner's or separate contractor's work as fit and proper to receive Construction Contractor's Work, except as to latent defects in such work by others.

#### ARTICLE 6 MISCELLANEOUS PROVISIONS

6.01 This Agreement will be governed and interpreted by the internal laws of the state where the project is located without reference to the conflict of law rules.

6.02 Owner and Construction Contractor each binds itself, its successors, assigns and legal representatives to the other party hereto and to the successors, assigns and legal representatives of such other party with respect to all covenants, agreements and obligations contained in the Contract Documents. Construction Contractor shall not assign its rights or responsibilities under the Contract Documents without the prior written consent of Owner which consent may be granted or withheld in Owner's sole discretion, and any attempt at such an assignment without such consent shall be null and void. Further, Construction Contractor shall not assign any monies due or to become due to Construction Contractor hereunder, without the prior written consent of Owner. Owner may assign

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its rights and obligations under this Contract and following the assumption of such obligations by the assignee, Owner shall be relieved of any and all liability under the Contract.

6.03 All notices required or permitted to be given by the Contract Documents shall be in writing and given in accordance with this Section. Written notice shall be deemed to have been duly served only if (i) intended for Construction Contractor, delivered in person to Construction Contractor's project superintendent at the Site, or (ii) if mailed, within three calendar days after the date it is sent by either registered or certified mail, or (iii) if sent by overnight courier, on the weekday (which is not a holiday) after it is delivered to such overnight courier in sufficient time for next day delivery, in each case for clauses (ii) and (iii) addressed to Owner or Construction Contractor, as the case may be, at the respective address for such notice to be given provided in the Agreement. Either party may change the respective address for receipt of notices under clauses (ii) and (iii) by furnishing at least 10 business days advance written notice of such change in address to the other party.

6.04 If required by Section 3 of the Agreement, Construction Contractor shall furnish Owner with payment and performance bonds, as applicable, covering Construction Contractor's faithful performance and payment obligations under the Contract Documents and the payment of all of Construction Contractor's obligations arising thereunder. All required bonds shall equal 100% of the then existing Contract Sum. All such bonds shall be with a surety acceptable to Owner (and in any event such surety shall have a Best rating of at least "A+" and class XII) and shall name Owner and Building Owner/Manager as obligees thereunder together with such entities as Owner may designate as additional obligees thereunder. All such bonds shall include a provision stating that no modification of any provision of any Contract Document a change in contract time, Contract Sum or condition of payment, will release the surety either in part or in whole. In any event, all such bonds shall be in form and substance satisfactory to Owner. If from time to time any Work is bonded and the Contract Sum therefor is increased in the aggregate by one or more increments of \$10,000 or more, then the bond applicable thereto shall be increased by the amount by which the Contract Sum was increased. Bonds shall remain in full force and effect during the term of Contract Documents and during the term of warranty related thereto.

6.05 No action or failure to act by Owner or Construction Contractor shall constitute a waiver of any right or duty afforded either of them under the Contract Documents, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

6.06 If for any reason labor employed directly or indirectly through a subcontractor or by Construction Contractor engages in any action taken with the intent of impeding or stopping the progress of the Work, or individually or in concert with others, unlawful strikes, slow downs or taking, engaging or participating in any other withholding of or interference with services (including honoring pickets or picket lines, improperly performing Work required to be performed under the Contract Documents or making claims resulting in work jurisdiction disputes), and taking all or any of such actions so as to impede or stop the progress of the Work (collectively an "Improper Practice"), Owner shall have the right to require that Construction Contractor take all necessary and immediate action to bring about a return to normal operations. If Construction Contractor fails, in the reasonable opinion of Owner, to take prompt remedial action as provided above, Owner shall have the right after 48 hours' notice to Construction Contractor to (a) take such action in the name of Construction Contractor as may be reasonably necessary to obtain an end to the Improper Practice, and (b) back-charge all costs and expenses connected therewith to Construction Contractor, including legal, accounting, administrative and other direct, indirect, general and special expenses.

6.07 In construing or interpreting the Contract Documents, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the context so requires. Unless specifically identified to the contrary, throughout the Contract Documents the words "include", "including", "included", and "includes" when used in any tense (i) shall mean "including but not limited to," and (ii) shall not be intended to designate a specific and limited list of items but rather shall designate examples, without limitation of other items to be included. All references contained in these General Conditions to one or more exhibits, schedules or appendices shall be deemed to refer to the exhibits, schedules or appendices attached hereto and incorporated herein, unless the context clearly references exhibits, schedules or appendices to another agreement or document, and said exhibits are incorporated into these General Conditions by reference and are a part of the Contract Documents as though fully rewritten herein.

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6.08 Construction Contractor has not and shall not, directly or indirectly, provide funds or other considerations to any person or entity (including Owner and Owner's employees and agents), improperly to procure special or unusual treatment with respect to the Contract Documents or for the purpose of otherwise improperly influencing the relationship between Owner and Construction Contractor relating to the Project. Additionally, Construction Contractor shall cause all of its officers, directors, employees, partners, agents and subcontractors (as the case may be) to comply with the restrictions contained in the preceding sentence. Construction Contractor represents and warrants to Owner that Construction Contractor, its officers, directors, employees, partners, agents, and subcontractors have not at any time in the past directly or indirectly provided funds or other consideration to any person or entity improperly to procure special or unusual treatment with respect to the Contract Documents or for the purpose of otherwise improperly influencing the relationship between Owner and Construction Contractor.

6.09 In the event of any dispute whatsoever between Owner and Construction Contractor, Construction Contractor shall continue to proceed diligently with performance as required by the Contract Documents. The parties shall make reasonable efforts to resolve each dispute within 30 days from the time the parties have knowledge of the existence of such dispute; provided, however, in no event shall delay in such determination excuse prompt and proper performance of the Work or payment of undisputed sums as required by the Contract Documents.

6.10 Except as otherwise expressly provided in the Contract Documents, the Contract Documents are made for the sole benefit of Construction Contractor and Owner and no other person or entity shall have any right or action of any kind hereunder or be deemed to be a third-party beneficiary of the Contract Documents or of the services to be provided hereunder. If any provision of the Contract Documents is held invalid as applied to any fact or circumstance, such invalidity shall not affect the validity of such provisions as applied to any other fact or circumstance or the validity of any other provision of the Contract Documents.

6.11 In the event of any litigation between the parties to construe or enforce the provisions of the Contract Documents, the prevailing party in such litigation shall be entitled to recover from the other its reasonable attorneys' fees and expenses.

6.12 All signs on the Site shall be subject to Owner's prior written approval.

## ARTICLE 7 TIME

7.01 All time limits stated in the Contract Documents for the performance of Construction Contractor's obligations are of the essence. If Construction Contractor is delayed at any time in the progress of the Work by (i) any act of Owner not permitted pursuant to the Contract Documents, (ii) changes in the Work ordered by Owner, unless due to deficiencies in the plans which Construction Contractor should have discovered, (iii) fire or other unavoidable casualties, (iv) labor disputes (subject to the provisions of Section 6.06 above), (v) unusual delay in transportation, (vi) uncustomary adverse weather conditions not reasonably anticipated, or (vii) delay authorized by Owner, then the contract time shall be extended by change order for such time as Owner may determine. In no event shall any such extension of contract time exceed the actual period of time lost by reason of the causes aforesaid. In all events, Construction Contractor shall use Construction Contractor's best efforts to eliminate the cause of any delay or minimize any delay. Notwithstanding the foregoing to the contrary, the contract time shall be extended only to the extent the completion date specified in the Completion Schedule is necessarily extended due to any of (i) through (vii) above. Within 5 days after commencement of such delay or deviation from the Completion Schedule, Construction Contractor shall confirm, in writing, any delay or deviation from the Completion Schedule, including advice as to the action Construction Contractor proposes to undertake to correct each deficiency and any claim for extension of time and the probable effect of such delay; otherwise it shall be waived. The presentation of any such claim shall not establish the validity of the claim.

7.02 To the fullest extent permitted by law but subject to the second sentence of this Section 7.02, Construction Contractor agrees that (i) none of Owner, Owner's professionals, Owner's separate contractors, or anyone else acting on Owner's behalf shall be liable for any loss or damage sustained by, or additional costs incurred by, Construction Contractor through delay, acceleration, hindrance, interference or other impediment to completion of the Work caused in whole or in part by Owner, Owner's professionals, Owner's separate contractors, or anyone else acting on Owner's behalf (collectively "Owner's Delay"), and (ii) Construction Contractor shall not be entitled



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to make and hereby waives any claim for damages or additional costs and agrees that Construction Contractor's sole remedy for any Owner's Delay shall be an extension of the contract time by a change order in accordance with the provisions of the Contract Documents. Notwithstanding the preceding sentence, to the extent an Owner's Delay causes Construction Contractor to incur additional expenses related to the Work, then Construction Contractor shall, as Construction Contractor's sole remedy, be entitled to reimbursement for such additional out-of-pocket costs without any amount for overhead or profit to Construction Contractor or any subcontractor.

7.03 If liquidated damages are applicable to the Project as set forth in Section 4 of the Agreement, and if substantial completion of the Work does not occur on or before the date specified therefor in the Completion Schedule, Construction Contractor shall pay to Owner as liquidated damages for such delay the Per Day Liquidated Damage Amount for each day from and after such scheduled date of substantial completion until substantial completion occurs. If liquidated damages are applicable to the Project as set forth in Section 4 of the Agreement, then Construction Contractor acknowledges and agrees that the damages which Owner will suffer as a result of such delay are difficult to estimate and that the forgoing amount bears a reasonable relationship to the damages that would be suffered and costs incurred by Owner occasioned by such delay. Such liquidated damages relate only to Owner's damages resulting from delays and shall not be construed to constitute a remedy for damages due to any defects in the Work or any other failure of Construction Contractor to perform any of its obligations hereunder, other than its obligation to cause substantial completion to occur in accordance with the Completion Schedule.

#### ARTICLE 8 FEES, PAYMENTS AND COMPLETION

8.01 Construction Contractor represents to Owner that to the best of Construction Contractor's knowledge the Schedule of Values and Anticipated Draw Schedule attached to the Agreement as Exhibit B accurately estimates the amounts that may be payable to Construction Contractor each month; provided, however, that Owner shall be obligated only to make payments in the amounts provided for in the Contract Documents. The Schedule of Values shall be (i) used as a tool to assist Owner in evaluating applications for payment, (ii) based upon the Completion Schedule, and (iii) updated and revised from time to time at Owner's request. The Contract Sum includes all fees to be paid to Contractor and all payments for general conditions items.

8.02 Subject to additions and deductions by change orders as provided for in the Contract Documents, Owner shall pay Construction Contractor, pursuant to the Contract Documents, for performance of the Work, the Contract Sum set forth in the Agreement. Included within the Contract Sum are all sales, consumer, use, personal property and other similar taxes applicable to the Work or any portion thereof provided by Construction Contractor. Prior to the time Construction Contractor orders any materials or equipment for the Work or performs any labor on the Site, Construction Contractor shall be entitled to receive progress payments only to cover Construction Contractor's reasonable out-of-pocket costs and expenses incurred in the performance of Construction Contractor's services under the Contract Documents. Construction Contractor shall submit to Owner no later than the 25th day of each month an itemized application for payment substantially in the form of Schedule 8.02 attached hereto (the form of which must be satisfactory to Owner), notarized, supported by such documents and data substantiating Construction Contractor's right to payment as Owner may reasonably require, and reflecting retainage as provided elsewhere in the Contract Documents ("application for payment"). Notwithstanding anything to the contrary contained in the Contract Documents, Owner requires, as a condition of approving and/or making a progress payment, that Construction Contractor furnish Owner (a) with respect to the current application for payment, an affidavit listing every subcontractor in connection with the Work and the amounts due or to become due to such subcontractors for Work done and materials furnished through the date of said application for payment; (b) with respect to the current application for payment, a certified payroll for such month; and (c) with respect to the payment made for the preceding month, evidence satisfactory to Owner that all payrolls, bills for materials and equipment delivered to the Site, and other indebtedness related to the Work and giving rise to all previous applications for payment up to, but not including, the current one have been paid in full or otherwise satisfied; (d) lien waivers from Construction Contractor covering all Work performed through the date of the current application for payment; (e) lien waivers from each subcontractor covering the payments made through the preceding application for payment; (f) a sworn acknowledgment of payments and credits to which Owner is entitled by Construction Contractor; and (g) Construction Contractor's statement of percentage of completion of each itemized component of the Schedule of Values and the Work as a whole; provided, however, that notwithstanding any provisions of the Contract Documents which are or may appear to be to the contrary, in no event shall Owner be obligated to pay to

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Construction Contractor an amount which exceeds the cost of the Work incurred by Construction Contractor to the date of the current application for payment less amounts paid to date and less retainage as provided elsewhere in the Contract Documents. Unless otherwise provided in the Contract Documents, the "Cost of the Work", "cost of the Work", and "cost" shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age, and unemployment insurance, and fringe benefits required by agreement or custom; worker's or workers' compensation insurance, bond premiums; and rental value of equipment and machinery. As used throughout the Contract Documents, the terms "Cost of the Work", "cost of the Work" and "cost" shall not include any cost or expense in excess of the Contract Sum. Each application for payment shall be accompanied by such other information as Owner may require.

8.03 Owner will, within 30 days after the receipt of Construction Contractor's application for payment, either approve the application for payment and issue payment to Construction Contractor for such amount as Owner determines is properly due, or notify Construction Contractor in writing of Owner's reasons for withholding such approval and payment. Construction Contractor shall promptly pay each subcontractor and direct material supplier, upon receipt of payment from Owner, out of the amount paid to Construction Contractor on account of such subcontractor's Work or each material supplier's supplies, the amount to which said subcontractor or material supplier is entitled.

8.04 Payments may be withheld by Owner, among other things, on account of (a) defective Work not remedied; (b) claims filed; (c) failure of Construction Contractor to make payments properly to subcontractors or for labor, materials or equipment; (d) damages to another contractor; (e) unsatisfactory prosecution of the Work by Construction Contractor, including the fact that the Work has not progressed to the point indicated in the application for payment, (f) failure of Construction Contractor to fully comply with the procedures set forth in this Article 8; (g) evidence that the Work cannot be completed for the unpaid balance of the Contract Sum; or (h) Construction Contractor's breach of the Contract Documents, not remedied or cured.

8.05 Owner shall retain from each progress payment a retainage (the "Retainage") in the amount of 10% of the Contract Sum eligible for payment to Construction Contractor until the Work is finally complete. Owner shall not be obligated to release the Retainage for subcontractors who have performed work in connection with the Work until all of the Work is complete. Following Construction Contractor's request Owner, acting in its sole and absolute discretion and under no obligation, contractual or otherwise to do so, may approve (i) the payment of all retainage owed to any subcontractor following final completion of such subcontractor's Work and presentation of a final lien waiver from such subcontractor and (ii) reduce Retainage from 10% to any lesser percent of the Contract Sum following substantial completion of the Work.

8.06 When Construction Contractor considers that the Work has reached the point of substantial completion, Construction Contractor shall prepare for submission to Owner a preliminary list of uncompleted items of the Work ("Punch List Items") (a) which do not interfere with the use and occupancy of any area of the Site for its intended purpose and (b) which as a group are capable of being completed by Construction Contractor within 30 days of issuance of any Punch List (the "Punch List" is the list containing the Punch List Items). Substantial completion shall include the following: (i) all systems relating to the Work shall have been fully commissioned, in accordance with industry standards and standards set forth in the Contract Documents for documenting and verifying the operation and performance of such systems in conformity with the design intent, (ii) all improvements included in the Work shall be ready for occupancy for their intended purposes, and (iii) a certificate of occupancy, as required, shall have been duly issued by the applicable governmental authorities. Owner shall have the right to add items to the preliminary Punch List submitted by Construction Contractor based upon Owner's inspection of the Work. Such revised Punch List, when approved along with Owner's determination of substantial completion, shall be the Punch List which must be completed by Construction Contractor by the date for final completion. The failure to include any items on such list does not alter the responsibility of Construction Contractor to complete all Work in accordance with the Contract Documents. When Owner, on the basis of an inspection, determines that the Work has reached the point of substantial completion, Owner will then prepare a Certificate of Substantial Completion which shall establish the date of substantial completion and shall state the responsibilities of Owner and Construction Contractor for security, maintenance, heat, utilities and damage to the Work, and, except as otherwise provided, insurance and warranties required by the Contract Documents shall commence on the date of substantial completion of the Work. The Certificate of Substantial Completion shall be in the form of Schedule 8.06 hereto and shall be submitted to Construction Contractor for Owner's and Construction Contractor's written acceptance of the

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responsibilities assigned to them therein. Upon substantial completion of the Work and upon application by Construction Contractor and execution of a Certificate of Substantial Completion by Owner, Owner shall make payment for such Work or portion thereof, as provided elsewhere in the Contract Documents.

8.07 Upon receipt of written notice that the Work is ready for final inspection (and all Punch List Items have been rectified) and upon receipt of an acceptance of a final application for payment, Owner, or its designee, will promptly make such final inspection and when it finds the Work acceptable under the Contract Documents, it will promptly approve the final application for payment and issue the final payment, accompanied by a statement that the Work has been completed in accordance with the terms and conditions of the Contract Documents.

8.08 The final payment shall not become due until Construction Contractor submits to Owner (a) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or its property might in any way be responsible have been paid or otherwise satisfied; (b) consent of surety, if any, to final payment; (c) if required by Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of all possible liens arising out of the Contract Documents, Construction Contractor's and subcontractors' affidavits, to the extent and in such form as may be designated by Owner; and (d) as-built drawings, operations and maintenance data, warranties, and such other data as may be required by the Contract Documents. The acceptance of final payment by Construction Contractor shall constitute a waiver of all claims by Construction Contractor against Owner, except those previously made and specifically reaffirmed in writing with Construction Contractor's application for final payment and still unsettled.

8.09 (a) Construction Contractor warrants that title to all Work, materials and equipment covered by an application for payment will pass to Owner either by incorporation in the Project or upon the receipt of payment by Construction Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances ("Liens"). However, Construction Contractor shall remain responsible for the care and custody of such materials, equipment, and Work until such time as Owner accepts (in writing) such responsibility. Construction Contractor further warrants that no Work, materials or equipment covered by an application for payment will have been acquired by Construction Contractor, or by any other person performing Work at the Site of furnishing materials and equipment for the Project, subject to an agreement under which as interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by Construction Contractor or such person.

(b) In the event that a lien is filed of record as a claim against the Site, the Building, or other improvement on or around the Site or against any monies due or to become due for any Work performed, or any materials furnished for the Work, then in addition to any other right or remedy Owner has under the Contract Documents or at law or equity and unless such lien is the result of Owner's failure to pay Construction Contractor amounts due under the Contract for Work and concerning which there is no dispute, Owner may withhold from Construction Contractor a reasonable amount until said claim or lien has been discharged or there has been furnished to Owner security satisfactory to Owner such that Owner will be protected and held harmless from any liability, fees or costs in connection therewith. In addition, if Construction Contractor fails to remove any such lien by payment or release or to furnish to Owner such satisfactory security, within ten (10) days after written demand, such failure shall constitute a default hereunder. Without limitation of Owner's other rights and remedies, if such a default occurs, Owner may, but shall not be obligated to, procure a bond or other security reasonably calculated to protect Owner from any liability in connection with such default and Owner may back-charge Construction Contractor for all costs and expenses incurred in connection therewith.

## ARTICLE 9 PROTECTION OF PERSONS AND PROPERTY

9.01 Construction Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Construction Contractor shall designate a responsible member of its organization at the Site, which person shall be approved by Owner in writing, whose duty shall be the promotion of safety and prevention of accidents, and who shall be responsible for enforcing all Government Requirements, and rules, regulations and orders of Owner pertaining thereto. This person shall be Construction Contractor's superintendent unless otherwise designated by Construction Contractor in writing to Owner.